

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

November 1, 2007

A meeting of the Board of Environmental Protection was held on Thursday, November 1, 2007 at the Holiday Inn / Ground Round, Augusta, Maine. Virginia Plummer, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott, and Nancy Ziegler

Absent: Nancy Anderson

<u>Staff:</u>	Bureau of Air Quality	Marc Cone
	Bureau of Air Quality	Andrea Lani
	Bureau of Air Quality	Ron Severance
	Bureau of Air Quality	Mark Roberts
	Bureau of Air Quality	Louis Fontaine
	Bureau of Air Quality	Carolyn Wheeler
	Bureau of Land and Water Quality	Hetty Richardson
	Bureau of Land and Water Quality	Mike Mullen
	Bureau of Remediation and Waste Management	Richard Kaselis
	Bureau of Remediation and Waste Management	Mark Hyland

Others: David Littell, Commissioner
Cindy Bertocci, BEP Executive Analyst
Jerry Reid, Assistant Attorney
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 4:00 p.m.)

The Board convened at 9:00 a.m. with a public hearing in the matter of:

CHAPTER 305, NATURAL RESOURCES PROTECTION ACT - PERMIT BY RULE
SECTION 20, Activities in existing developed areas located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner Littell reported the following:

Legislation:

Significant Wildlife Habitat: A bill includes provisions that require permit streamlining and perhaps notice to landowners concerning vernal pools. The Department has field analysis to rely on in support of making the necessary revisions to the rules and will also utilize the mapping done by the Department of Inland Fisheries and Wildlife.

Underground oil storage: The Department will be taking steps to achieve compliance with federal standards concerning underground oil storage as it is necessary to secure vital federal funding for that program.

Well Head / Drinking Water Protection – The Legislature passed a bill last session which expands the use of the Natural Resource Protection Act to regulate areas associated with drinking water supplies. The Department now has concerns with expanding the NRPA standards and proposed new language that would eliminate what the Department believes would be a burdensome approach to permitting and still protect the drinking water sources from the threat of releases from above ground storage tanks. The amendment language would omit inclusion of drinking water surface supplies and avoid regulation of significant surface drinking water areas.

QUESTION: Board member Ernest Hilton asked if the proposed legislation would provide for use of Permit-By-Rule (PBR) standard for protection of the drinking water resource.

Commissioner Littell explained that, based on earlier discussions, the use of PBR was unclear. He noted that the Department's primary concern is associated with the requirement to apply NRPA to all undeveloped lots near existing developed lakes and rivers used for drinking water supply.

Department Omnibus Bill: There are two bills, one in DEP's omnibus bill and another proposed by Senator Mills which would increase the per diem and meal allotment for both the Land Use Regulation Commission (LURC) and the Board.

Chemical Safety: The bill concerning safer chemicals is consistent with the recommendations proposed by the Governor's taskforce for safer chemicals.

Budget: The Department has not received the final report on the budget, but anticipates a reduction in the revenue forecast. Additionally, the Department's request for fee increases for the air and water programs is still being considered by the Governor's Office; without a fee increase, current funding needs of those program bureaus will not be met.

DEP Staff Day: Commissioner Littell invited Board members to attend the annual staff day on Monday, November 26th from 10:00 to 2:30 p.m. at the Augusta Civic Center ~~ noting that Board member Matt Scott has attended all past events.

Consolidation: The Governor has asked the natural resource commissioners to work on the development of a plan that would consolidate the State's natural resources agencies (Agriculture, Dept. of Marine Resources, Dept. of Inland Fisheries and Wildlife, Dept. of Conservation, State Planning and DEP). The goal of this consolidation initiative is to achieve administrative efficiencies.

BEP Jurisdiction: The Department received the following requests for Board jurisdiction and concluded that they do not meet the criteria for BEP licensing oversight.

Farmington - Willow Springs Adult Living Center: technical issues linked to the steep slopes and stormwater and erosion control; these issues will be closely reviewed by the Department.

Poland - Poland Spring: public concern with traffic issues; this matter was forwarded to the Dept. of Transportation for follow-up.

Fort Kent – Maine Winter Sports Center: stormwater concerns and impacts from run-off to a private trout pond.

QUESTIONS:

Board member Nancy Ziegler asked for more details associated with the initiative to merge the natural resource agencies.

Commissioner Littell explained the Governor is interested in consolidation at the state level where it makes sense to achieve efficiencies, similar to his initiative to consolidate school districts.

Board member Matt Scott asked if term limits were being considered in addition to the increase to Board member compensation; adding that the Land Use Regulation Commission members do not have term limits.

The Commissioner indicated that he would report back following review of the bill language.

B. COMMENTS FROM THE BEP CHAIR: None

C. EXECUTIVE ANALYST COMMENTS:

Freedom of Access Act (FOAA): The Board's Executive Analyst provided Board members with a copy of the recent freedom on access act request pertaining to the Downeast LNG proceeding and indicated that additional guidance on this matter would be provided at a later date.

The Board's Assistant Attorney General, Jerry Reid, advised that Board members should keep all notes and emails pending receipt of the additional guidance and asked members to call either him or Peggy Bensinger with any questions.

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS: None

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

Board voted (9-0-0-1) to approve consent agenda items number 3, 4, 5, 6 and 7 as presented. Note: Agenda items number 1 and 2 were withdrawn from consideration prior to the meeting.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Nancy Anderson was absent.

- ~~1. LONGCHAMPS & SON, INC, Auburn – Administrative Consent Agreement and Enforcement Order (BLWQ-LAND)~~
- ~~2. SHAW ACRES COMMUNITY ASSOCIATION, Standish – Administrative Consent Agreement and Enforcement Order (BLWQ-LAND)~~
3. KENNEBUNK SEWER DISTRICT, Kennebunk - Administrative Consent Agreement and Enforcement Order (BLWQ-Water) (approval)
4. H.H.H., L.L.C., South Portland - Administrative Consent Agreement (BRWM)
5. MCFARLAND ASSOCIATES, INC, Windham – Administrative Consent Agreement and Enforcement Order (BRWM)
6. ROWE FORD SALES, Auburn – Administrative Consent Agreement (BAQ)
7. STOP AND SHOPPE FOOD MART, INC., Portland - Administrative Consent Agreement (BAQ)

III. Regular Agenda

1. CLEAN HARBORS ENVIRONMENTAL SERVICES, INC. – SOUTH PORTLAND Commercial Waste Oil Storage Facility License Renewal O-154-97-D-R (Approval)
Staff: Richard Kaselis, Bureau of Remediation & Waste Management

The Board voted (9-0-0-1) on a motion to approve the license renewal as amended for Clean Harbors Environmental Services, Inc. for a commercial waste oil storage and treatment facility located in a commercial and industrial area of South Portland. The order was amended to delete the duplicate sentence at the end of paragraph 1.B:

CLEAN HARBOR's is operating under the terms and conditions of its existing license as allowed under 06-096 CMR 2, Section 21A of the Department's Rules for Processing Applications. ~~CLEAN HARBOR's is operating under the terms and conditions of its existing license as allowed under 06-096 CMR 2, Section 21A of the Department's Rules for Processing Applications.~~

The Board voted pursuant to 38 M.R.S.A. Section 341-D(2), 38 M.R.S.A. 1301 et seq. and 06-096 CMR Chapter 860 Waste Oil Management Rules.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Nancy Anderson was absent.

2. CHAPTER 121, EMISSION LIMITATIONS AND EMISSION TESTING OF RESOURCE RECOVERY FACILITIES (and) STATE OF MAINE 111(d) MUNICIPAL WASTE COMBUSTOR STATE PLAN FOR LARGE AND SMALL (CLASS I & II) FACILITIES / REPEAL AND REPLACE / AMENDMENT (Adoption)
Staff: Deb Avalone-King and Marc Cone, Bureau of Air Quality

The Board voted (8-0-1-1) on a motion to adopt amendments to Chapter 121 Emission Limitations and Emission Testing of Resource Recovery Facilities and State of Maine 111(d) Municipal Waste Combustor State Plan for Large and Small Facilities as proposed. The vote was taken pursuant to 38 M.R.S.A. Section 341-D(1-B), 38 M.R.S.A. sections 585A, 585B and 590.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board member Sue Lessard recused. Board member Nancy Anderson was absent.

3. CHAPTER 152, CONTROL OF EMISSIONS OF VOLATILE ORGANIC COMPOUNDS FROM CONSUMER PRODUCTS / AMENDMENTS (adoption)

Staff: Andrea Lani, Bureau of Air Quality

The Board voted (9-0-0-1) on a motion to adopt amendments to Chapter 152, Control of Emissions of Volatile Organic Compounds from Consumer Products as presented which streamlines date coding, reporting requirements and sets limits on eighteen additional categories of consumer products and certain toxics. The Board voted pursuant to 38 M.R.S.A. Section 341–D(1-B), and 38 M.R.S.A. Section 585-A.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Nancy Anderson was absent.

4. CHAPTER 150, CONTROL OF EMISSIONS OF OUTDOOR WOOD BOILERS / NEW (provisional adoption)

Staff: Ron Severance, Bureau of Air Quality

The Board voted (9-0-0-1) on a motion to provisionally adopt Chapter 150, Control of Emissions of Outdoor Wood Boilers which establishes sale, installation and setback requirements for outdoor wood boiler units as an emergency, major substantive rule as presented with the following changes:

The Board voted (9-0-0-1) on a motion to amend proposed Chapter 150 by including additional language to clarify enforcement authority in Section 4D of the rule and in the Basis Statement as follows:

Section 4D and Basis Statement. **Enforcement Authority, and** Preemption

Include reference to the Department's Enforcement and Compliance Section in the basis statement portion of the rule. -- **"This rule is subject to enforcement under 38 M.R.S.A. Section 347-A et seq."**

The Board voted (9-0-0-1) on a motion to amend Section 3.B.(2) as follows:

Section 3. Requirements for the Sale and Installation and Operation of New Outdoor Wood Boilers – paragraph B.(2)

... installed at least 100 feet from the nearest property **line**.

Lastly, the Board directed the Executive Analyst to work with Department staff and develop a letter to the Joint Standing Committee on Natural Resources providing Board comments on the following issues:

- [1] possible allocation of funds for the purposes of a buy-back option for problem units where no resolution can be reached and outcome requires disabling or removal of the unit (note conflict between the sell through provision and a possible buy-back provision).
- [2] consideration of restrictions on siting units in other public areas (e.g. parks, outdoor recreation facilities)
- [3] consideration of possible provision for the installation of a newer technology replacement unit at an existing non-compliant location for nuisance free units.

Board members also requested a memo to Department staff that memorializes the Board's wish for staff to report back on the implementation of Chapter 150 in 2-years.

The Board voted pursuant to 38 M.R.S.A. Section 341–D(1-B), Section 585-A and Section 610-B.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Susan Lessard, Matt Scott, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board member Nancy Anderson was absent.

Next Regular Meeting –Thursday, November 15, 2007 – **Holiday Inn / Ground Round**